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March 4, 2022

VIA ECF AND UPS DELIVERY

Hon. Naomi Reice Buchwald
Daniel Patrick Moynihan
United States Courthouse
Courtroom 21A
500 Pearl Street
New York, NY 10007

Application granted.

SO ORDERED.


NAOMI REICE BUCHWALD
UNITED STATES DISTRICT JUDGE

Dated: New York, New York
March 10, 2022

**Re: *In re Kind LLC Healthy and All Natural Litig.*, No. 1:15-md-2645-NRB
In re Kind LLC Healthy and All Natural Litig., No. 1:15-mc-2645-NRB**

Dear Judge Buchwald,

Pursuant to Your Honor's Individual Rules and Practices § 2(H) and Standing Order, the Local Rules of the Southern District of New York, and the Southern District's Electronic Case Filing Rules & Instructions, Plaintiffs respectfully submit this request to file under seal unredacted versions of Plaintiffs' (i) Opposition to KIND's Motion for Summary Judgment, (ii) Opposition to KIND's Motion to Decertify the Classes, (iii) Opposition to KIND's Motion to Exclude Testimony and Expert Report of Dr. Anton Toutov, Ph.D., (iv) Memorandum in Support of Motion to Exclude Testimony and Expert Report of Dr. Ran Kivetz, Ph.D., and (v) Memorandum in Support of Motion to Exclude Testimony and Expert Report of Dr. Catherine Adams Hutt, Ph.D.; the Declaration of Dr. Anton Toutov, Ph.D.; and supporting documents attached as Exhibits 1-5, 8, 9, and 12-27 to the supporting Declaration of Tina Wolfson ("Wolfson Dec."),¹ and to file redacted versions of these briefs and exhibits as the publicly available filings.

In accordance with Your Honor's Individual Rules and Practices, unredacted versions of the above-referenced documents, along with redacted versions, are being filed contemporaneously with this request, and copies of this letter and the unredacted and redacted versions of the above-referenced documents shall be contemporaneously mailed to Your Honor.

In this action, the parties are subject to a Stipulated Protective Order approved by this Court. ECF No. 158. Under the terms of this Order, a party may designate as "Confidential" or "Highly Confidential" material or information that the party "reasonably and in good faith believes constitutes and reveals confidential trade secrets, proprietary business information, and/or non-public personal, client, or customer information concerning individuals or other entities," (*id.* ¶ 2.3) provided that the designating party "shall take care to limit any such designation to specific material that qualifies under the appropriate standards." *Id.* ¶ 5.1. Properly designated Confidential or Highly Confidential material may not be disclosed publicly under the terms of the Order (*id.* ¶¶ 7.1-7.3 (providing exhaustive lists of persons or entities to whom such information

¹ The ECF "Viewing Level" for these documents will be limited to "Selected Parties."

may be disclosed)) and must instead be filed under seal pursuant to Your Honor's Individual Practices. *Id.* ¶ 12.3.

Defendant has designated the following materials, which are included as supporting material and/or described with particularity in Plaintiffs' filings as Confidential or Highly Confidential under the terms of the Stipulated Protective Order:

- Transcript of Deposition of Elle Lanning and Exhibits 23 and 27 to same;
- Transcript of Deposition of Dr. Catherine Hutt and Exhibits 7, 10 and 13 to same;
- Transcript of Deposition of Dr. Ran Kivetz taken on February 14, 2022;
- Transcript of Deposition of Daniel Lubetzky and Exhibits 43 and 50 to same;
- Transcript of Deposition of Dr. Ran Kivetz taken on May 20, 2022;
- Transcript of Deposition of Elle Lanning;
- Exhibits 10 and 11 to Deposition of Brian Lutter;
- Documents produced by KIND during discovery in this action starting with Bates Stamps KIND_0012211, KIND_0017824, KIND_0002477, KIND_0032787, KIND_0032915, KIND_0033937, KIND_0034753, and Hutt001.

Although there is a presumption of public access to judicial documents, Federal Rule of Civil Procedure 26(c) authorizes district courts, upon a showing of good cause, to "require that the parties simultaneously file specified documents or information in sealed envelopes, to be opened as the court directs." Fed. R. Civ. P. 26(c)(1)(H). "Documents may be sealed if specific, on the record findings are made demonstrating that closure is essential to preserve higher values and is narrowly tailored to serve that interest." *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 120 (2d Cir. 2006) (internal quotations and alterations omitted). These "countervailing factors include but are not limited to . . . the privacy interests of those resisting disclosure." *Id.* (internal quotations omitted).


Here, Plaintiffs seek leave to file Plaintiffs' (i) Opposition to KIND's Motion for Summary Judgment, (ii) Opposition to KIND's Motion to Decertify the Classes, (iii) Opposition to KIND's Motion to Exclude Testimony and Expert Report of Dr. Anton Toutov, Ph.D., (iv) Memorandum in Support of Motion to Exclude Testimony and Expert Report of Dr. Ran Kivetz, Ph.D., and (v) Memorandum in Support of Motion to Exclude Testimony and Expert Report of Dr. Catherine Adams Hutt, Ph.D. and the Declaration of Dr. Anton Toutov, Ph.D. with all references to Confidential or Highly Confidential exhibits redacted and to submit these Confidential and Highly Confidential exhibits, as designated by Defendant, under seal in keeping with these confidentiality designations and representation that the documents to be sealed contain trade secrets and/or commercially sensitive business information of Defendant.

This request is narrowly tailored in that it relates only to documents designated by Defendant as Confidential or Highly Confidential pursuant to the Stipulated Protective Order and

will allow Plaintiffs' filings to be redacted only to the extent necessary to protect Defendant's claimed business interests. Plaintiffs contend these materials were not properly designated by Defendant and reserve all rights to challenge any such designation consistent with the terms of the Stipulated Protective Order.

Based on the foregoing, Plaintiffs respectfully request that: (i) the Court approve this request to file documents under seal; (ii) the redacted versions of Plaintiffs' (i) Opposition to KIND's Motion for Summary Judgment, (ii) Opposition to KIND's Motion to Decertify the Classes, (iii) Opposition to KIND's Motion to Exclude Testimony and Expert Report of Dr. Anton Toutov, Ph.D., (iv) Memorandum in Support of Motion to Exclude Testimony and Expert Report of Dr. Ran Kivetz, Ph.D., and (v) Memorandum in Support of Motion to Exclude Testimony and Expert Report of Dr. Catherine Adams Hutt, Ph.D.; the Declaration of Dr. Anton Toutov, Ph.D.; and 1-5, 8, 9, and 12-27 to the Declaration of Tina Wolfson be accepted as the public version to be electronically filed; and (iii) that the Court grant Plaintiffs leave to physically file un-redacted versions of the same under seal.

Respectfully submitted,

By: 

Todd S. Garber

CC: All Counsel of Record via ECF and Email